

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19976
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On January 3, 2007, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing income tax, penalty, and interest for the taxable year 2001 in the total amount of \$26,654.

On January 29, 2007, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but rather chose to provide additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) received information that showed the taxpayer sold property located in Idaho in 2001. The Bureau researched the Tax Commission's records and found that the taxpayer did not file a 2001 Idaho individual income tax return. The Bureau sent the taxpayer letters asking him about his requirement to file an Idaho income tax return. The taxpayer did not respond. The Bureau determined the taxpayer was required to file an Idaho income tax return. Therefore, the Bureau prepared a return for the taxpayer and sent him a Notice of Deficiency Determination citing Idaho Code section 63-3026A. The taxpayer protested the Bureau's determination stating that he has never been a resident of Idaho and the sale of the property resulted in a net financial loss for him.

The Bureau referred the matter for administrative review, and the Tax Commission sent the taxpayer a letter discussing the methods available for redetermining a protested Notice of

Deficiency Determination. The taxpayer did not respond to the Tax Commission's letter, so a follow-up letter was sent to the taxpayer. About a month later, an associate of the taxpayer contacted the Tax Commission to inform the Commission that the taxpayer had been hospitalized for about a month and was expected to remain hospitalized for another couple of weeks. The taxpayer's associate said that after the hospitalization, the taxpayer was expected to be recovering for six to eight weeks. With this information, the Tax Commission decided to postpone any further action until the taxpayer was past his recovery period.

The Tax Commission initiated contact with the taxpayer about three months later asking the taxpayer to provide documentation that would establish his basis in the property sold. The taxpayer responded that he had just returned to work and that he needed to get information from the title company on the sale of the property. He stated he hoped to have something to the Tax Commission in a couple of weeks. After not receiving anything from the taxpayer, the Tax Commission contacted the taxpayer again. The taxpayer stated he was having his attorney review the matter and hoped to have something within a week. Once again, the taxpayer failed to provide any documentation or information. The Tax Commission contacted the taxpayer, and the taxpayer asked what information the Tax Commission had on the property. The taxpayer told the Tax Commission the history of the property and stated that it ultimately resulted in a loss to him. He stated he was working with his accountant to get the needed information.

Shortly after that conversation, the taxpayer went back into the hospital. The taxpayer contacted the Tax Commission when he got out of the hospital and stated he found the closing statements for the purchase and sale of the property. The taxpayer stated he would have those documents to the Tax Commission within ten days. The taxpayer also stated he believed the property was reported through a family trust.

The Tax Commission never received the documents the taxpayer stated he would provide. The Tax Commission sent the taxpayer a letter with a final date for providing the information but did not receive a response from the taxpayer. Therefore, the Tax Commission obtained additional information [Redacted] and decided the matter based upon the information available.

Idaho Code section 63-3026A states, in part, that income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from the ownership or disposition of any interest in real property located in Idaho. Idaho Code section 63-3030 states, in part, that any nonresident individual having a gross income from Idaho sources in excess of \$2,500 for the taxable year is required to file an Idaho individual income tax return.

The taxpayer was reported as having sold property located in Idaho. The selling price of the property was \$229,950. The taxpayer did not provide any information or documentation that established his basis in the property, so it is unknown how much of a gain or loss the taxpayer realized on the sale of the property. Nonetheless, it is known that the taxpayer received \$229,950 on the sale of the property. This is well in excess of the filing threshold for nonresident individuals. Therefore, the Tax Commission finds the taxpayer did have a filing requirement with the state of Idaho.

The taxpayer argued that the sale of the property resulted in a net financial loss to him. However, the taxpayer did not provide anything to show that he sustained a loss on the sale of the property. In Idaho, a State Tax Commission deficiency determination is presumed to be correct, and the burden is on the taxpayer to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). The taxpayer did not meet his burden. Nevertheless, the Tax Commission

recognizes the Bureau's determination was not totally accurate. The Bureau's determination was based on the facts that the taxpayer was single and had no other income than the sale of the Idaho property. This is not the case. A quick review of the taxpayer's 2001 federal filing shows that the taxpayer filed a married filing joint return, had income from other sources, and claimed itemized deductions.

Idaho Code section 63-3031 states, in part, that if a taxpayer files his federal income tax return as married filing joint, he must file his Idaho return as married filing joint. The taxpayer's federal income tax return was filed with his spouse, [Redacted]. Consequently, the taxpayer's Idaho income tax return should be filed jointly [Redacted], and include all their income and deductions in the computation of Idaho's tax. Therefore, the Tax Commission modifies the return prepared by the Bureau to include the information provided on the taxpayer's federal income tax return. (Hereafter, "taxpayers" refers to [Redacted].)

In addition to the changes in filing status and the income and deductions information, the Tax Commission also finds the taxpayers were entitled to the Idaho capital gain deduction. During a conversation [Redacted], as he was explaining the history of the property's ownership, it was evident that the taxpayers held the property for the requisite time as provided in Idaho Code section 63-3022H. Therefore, the Tax Commission included the capital gain deduction in the computation of the taxpayers' Idaho taxable income.

The Bureau added interest and penalty to the taxpayer's Idaho tax liability. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated January 3, 2007, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax, penalty, and interest computed to August 31, 2008:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2001	\$1,540	\$385	\$611	\$2,536

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' right to appeal this decision is enclosed.

DATED this _____ day of _____, 2008.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2008, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.
